

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 176

**Introduced by Senator Denham
(Coauthor: Senator Torlakson)**

(Coauthors: Assembly Members Benoit, Bogh, DeVore, *Garcia*,
Shirley Horton, Huff, ~~and Jones~~ *Jones*, and Maze)

February 9, 2005

An act to amend Section 13380 of, and to add Section 23613 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 176, as amended, Denham. Traffic collision: fatality: testing.

Under existing law, a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any driving under the influence offense allegedly committed in violation of the statutes.

This bill would extend the implied consent testing requirement to a person who, while driving, is at fault in causing a traffic collision that is the proximate cause of a fatality. The bill would also require a peace officer, if a person is so involved in a collision and refuses to take the test, to serve a notice of an order suspending or revoking the person's privilege to operate a motor vehicle.

Because this bill would increase the level of services imposed on local law enforcement, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13380 of the Vehicle Code is amended
2 to read:
3 13380. (a) If a peace officer serves a notice of an order of
4 suspension pursuant to Section 13388 or subdivision (d) of
5 Section 23613, or arrests a person for a violation of Section
6 23140, 23152, or 23153, the peace officer shall immediately
7 forward to the department a sworn report of all information
8 relevant to the enforcement action, including information that
9 adequately identifies the person, a statement of the officer's
10 grounds for belief that the person violated Section 23136, 23140,
11 23152, or 23153, a report of the results of all chemical tests that
12 were conducted on the person or the circumstances constituting a
13 refusal to submit to or complete the chemical testing pursuant to
14 Section 13388 ~~or 23612, 23612, or 23613~~ a copy of any notice
15 to appear under which the person was released from custody,
16 and, if immediately available, a copy of the complaint filed with
17 the court. For the purposes of this section ~~and subdivision (g) of~~
18 ~~Section 23612, subdivision (g) of Section 23612, and subdivision~~
19 ~~(f) of Section 23613~~, "immediately" means on or before the end
20 of the fifth ordinary business day following the arrest, except that
21 with respect to Section 13388 only, "immediately" has the same
22 meaning as that term is defined in paragraph (3) of subdivision
23 (b) of Section 13388.
24 (b) The peace officer's sworn report shall be made on forms
25 furnished or approved by the department.
26 (c) For the purposes of this section, a report prepared pursuant
27 to subdivision (a) and received pursuant to subdivision (a) of
28 Section 1801, is a sworn report when it bears an entry identifying

1 the maker of the document or a signature that has been affixed by
2 means of an electronic device approved by the department.

3 SEC. 2. Section 23613 is added to the Vehicle Code, to read:

4 23613. (a) (1) (A) A person who drives a motor vehicle is
5 deemed to have given his or her consent to chemical testing of
6 his or her blood or breath for the purpose of determining the
7 alcoholic content of his or her blood, if while driving, the person
8 is at fault in causing a traffic collision that is the proximate cause
9 of a fatality. If a blood or breath test, or both, are unavailable,
10 then subdivision (d) of *Section 23612* applies.

11 (B) A person who drives a motor vehicle is deemed to have
12 given his or her consent to chemical testing of his or her blood or
13 urine for the purpose of determining the drug content of his or
14 her blood, if while driving, the person is at fault in causing a
15 traffic collision that is the proximate cause of a fatality.

16 (C) Each driver who is at fault in causing a traffic collision
17 that is the proximate cause of a fatality shall submit to testing
18 under this section upon the direction of a peace officer.

19 (D) The person shall be told that his or her failure to submit to,
20 or the failure to complete, the required chemical testing will
21 result in a fine, mandatory imprisonment if the person is
22 convicted of a violation of Section 23152 or 23153, and (i) the
23 suspension of the person's privilege to operate a motor vehicle
24 for a period of one year, (ii) the revocation of the person's
25 privilege to operate a motor vehicle for a period of two years if
26 the refusal occurs within 10 years of a separate violation of
27 Section 23103 as specified in Section 23103.5, or of Section
28 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of
29 subdivision (c) of Section 192 of the Penal Code that resulted in
30 a conviction, or if the person's privilege to operate a motor
31 vehicle has been suspended or revoked pursuant to Section
32 13353, 13353.1, or 13353.2 for an offense that occurred on a
33 separate occasion, or (iii) the revocation of the person's privilege
34 to operate a motor vehicle for a period of three years if the
35 refusal occurs within 10 years of two or more separate violations
36 of Section 23103 as specified in Section 23103.5, or of Section
37 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of
38 subdivision (c) of Section 192 of the Penal Code, or any
39 combination thereof, that resulted in convictions, or if the
40 person's privilege to operate a motor vehicle has been suspended

1 or revoked two or more times pursuant to Section 13353,
2 13353.1, or 13353.2 for offenses that occurred on separate
3 occasions, or if there is any combination of those convictions or
4 administrative suspensions or revocations.

5 (2) (A) If the person, while driving, is at fault in causing a
6 traffic collision that is the proximate cause of a fatality, the
7 person has the choice of whether the test shall be of his or her
8 blood or breath and the officer shall advise the person that he or
9 she has that choice. If the person is incapable, or states that he or
10 she is incapable, of completing the chosen test, the person shall
11 submit to the remaining test. If a blood or breath test, or both, are
12 unavailable, then subdivision (d) of *Section 23612* applies.

13 (B) If the person is subsequently lawfully arrested for driving
14 under the influence of any drug or the combined influence of an
15 alcoholic beverage and any drug, the person has the choice of
16 whether the test shall be of his or her blood, breath, or urine, and
17 the officer shall advise the person that he or she has that choice.

18 (C) A person who chooses to submit to a breath test may also
19 be requested to submit to a blood or urine test if the officer has
20 reasonable cause to believe that the person was driving under the
21 influence of a drug or the combined influence of an alcoholic
22 beverage and a drug and if the officer has a clear indication that a
23 blood or urine test will reveal evidence of the person being under
24 the influence. The officer shall state in his or her report the facts
25 upon which that belief and that clear indication are based. The
26 person has the choice of submitting to and completing a blood or
27 urine test, and the officer shall advise the person that he or she is
28 required to submit to an additional test and that he or she may
29 choose a test of either blood or urine. If the person arrested either
30 is incapable, or states that he or she is incapable, of completing
31 either chosen test, the person shall submit to and complete the
32 other remaining test.

33 (3) If the person, while driving, is at fault in causing a traffic
34 collision that is the proximate cause of a fatality, and, because of
35 the need for medical treatment, the person is first transported to a
36 medical facility where it is not feasible to administer a particular
37 test of, or to obtain a particular sample of, the person's blood,
38 breath, or urine, the person has the choice of those tests that are
39 available at the facility to which that person has been transported.
40 In that case, the officer shall advise the person of those tests that

1 are available at the medical facility and that the person's choice
2 is limited to those tests that are available.

3 (4) The officer shall also advise the person that he or she does
4 not have the right to have an attorney present before stating
5 whether he or she will submit to a test or tests, before deciding
6 which test or tests to take, or during administration of the test or
7 tests chosen, and that, in the event of refusal to submit to a test or
8 tests, the refusal may be used against him or her in a court of law.

9 (5) A person who is unconscious or otherwise in a condition
10 rendering him or her incapable of refusal is deemed not to have
11 withdrawn his or her consent and a test or tests may be
12 administered whether or not the person is told that his or her
13 failure to submit to, or the noncompletion of, the test or tests will
14 result in the suspension or revocation of his or her privilege to
15 operate a motor vehicle. A person who is dead is deemed not to
16 have withdrawn his or her consent and a test or tests may be
17 administered at the direction of a peace officer.

18 (b) A person who is afflicted with hemophilia is exempt from
19 the blood test required by this section.

20 (c) A person who is afflicted with a heart condition and is
21 using an anticoagulant under the direction of a licensed physician
22 and surgeon is exempt from the blood test required by this
23 section.

24 (d) If a driver who is at fault in causing a traffic collision that
25 is the proximate cause of a fatality refuses or fails to complete a
26 chemical test or tests, the peace officer, acting on behalf of the
27 department, shall serve the notice of the order of suspension or
28 revocation of the person's privilege to operate a motor vehicle
29 personally on the person. The notice shall be on a form provided
30 by the department.

31 (e) If the peace officer serves the notice of the order of
32 suspension or revocation of the person's privilege to operate a
33 motor vehicle, the peace officer shall take possession of all
34 driver's licenses issued by this state that is held by the person.
35 The temporary driver's license shall be an endorsement on the
36 notice of the order of suspension and shall be valid for 30 days
37 from the date of accident.

38 (f) (1) The peace officer shall immediately forward a copy of
39 the completed notice of suspension or revocation form and any
40 driver's license taken into possession under subdivision (e), with

1 the report required by Section 13380, to the department. If the
2 person submitted to a blood or urine test, the peace officer shall
3 forward the results immediately to the appropriate forensic
4 laboratory. The forensic laboratory shall forward the results of
5 the chemical tests to the department within 15 calendar days of
6 the date of the arrest.

7 (2) (A) Notwithstanding any other provision of law, a
8 document containing data prepared and maintained in the
9 governmental forensic laboratory computerized database system
10 that is electronically transmitted or retrieved through public or
11 private computer networks to or by the department is the best
12 available evidence of the chemical test results in all
13 administrative proceedings conducted by the department. In
14 addition, any other official record that is maintained in the
15 governmental forensic laboratory, relates to a chemical test
16 analysis prepared and maintained in the governmental forensic
17 laboratory computerized database system, and is electronically
18 transmitted and retrieved through a public or private computer
19 network to or by the department is admissible as evidence in the
20 department's administrative proceedings. In order to be
21 admissible as evidence in administrative proceedings, a
22 document described in this subparagraph shall bear a certification
23 by the employee of the department who retrieved the document
24 certifying that the information was received or retrieved directly
25 from the computerized database system of a governmental
26 forensic laboratory and that the document accurately reflects the
27 data received or retrieved.

28 (B) Notwithstanding any other provision of law, the failure of
29 an employee of the department to certify under subparagraph (A)
30 is not a public offense.

31 (g) A preliminary alcohol screening test that indicates the
32 presence or concentration of alcohol based on a breath sample in
33 order to establish reasonable cause to believe the person was
34 driving a vehicle in violation of Section 23140, 23152, or 23153
35 is a field sobriety test and may be used by an officer as a further
36 investigative tool.

37 (h) If the officer decides to use a preliminary alcohol screening
38 test, the officer shall advise the person that he or she is requesting
39 that person to take a preliminary alcohol screening test to assist
40 the officer in determining if that person is under the influence of

1 alcohol or drugs, or a combination of alcohol and drugs. The
2 person's obligation to submit to a blood, breath, or urine test, as
3 required by this section, for the purpose of determining the
4 alcohol or drug content of that person's blood, is not satisfied by
5 the person submitting to a preliminary alcohol screening test. The
6 officer shall advise the person of that fact and of the person's
7 right to refuse to take the preliminary alcohol screening test.

8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.